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**SUPERIOR COURT OF ARIZONA**  
**MARICOPA COUNTY**

**IN RE THE GENERAL  
ADJUDICATION OF ALL RIGHTS TO  
USE WATER IN THE GILA RIVER  
SYSTEM AND SOURCE.**

No. W-1 (Salt)  
No. W-2 (Verde)  
No. W-3 (Upper Gila)  
No. W-4 (San Pedro)

**CONTESTED CASE NO. W1-208**

**APPLICATION FOR AN ORDER FOR  
SPECIAL PROCEEDINGS TO APPROVE  
AN INDIAN WATER RIGHTS  
SETTLEMENT STIPULATION**

**DESCRIPTIVE SUMMARY:**

In accordance with the Special Procedural Order issued by the Supreme Court of Arizona on May 16, 1991 ("Special Procedural Order"), this is an application for an order for special proceedings to approve (i) a Stipulation dated July 11, 2006 to

1 which the undersigned are parties and (ii) the Judgment and Decree attached as Exhibit B to the  
2 Stipulation ("Proposed Judgment"). The Stipulation and Judgment and Decree settle the federally  
3 reserved and other water rights within the Tucson Management Area of (i) the Tohono O'odham  
4 Nation ("Nation"), (ii) individual Indian trust allotment landowners located within the San Xavier  
5 Indian Reservation ("Allottees") and (iii) the United States acting on behalf of the Nation and the  
6 Allottees. The Tucson Management Area is defined as the Tucson Active Management Area, the  
7 Santa Cruz Active Management Area and that portion of the Upper Santa Cruz Basin not within  
8 either of the Active Management Areas.

9 **STATEMENT OF CLAIMANT NUMBERS:** City of Tucson ("Tucson"): 39-09-72680  
10 and 39-09-72681. Farmers Investment Co.: 39-09-77742 and 39-09-77743. United States on  
11 behalf of the Tohono O'odham (Papago at Sells) Indian Community, (Papago) San Xavier Indian  
12 Community, and the (Papago) Schuk Toak District of the Sells Papago Reservation: 39-74333,  
13 39-74335 and 39-74336. Asarco Incorporated ("Asarco"): 39-09-71594, 39-09-71595, 39-09-  
14 71687, 39-09-7168, 39-09-71690, 39-09-73094, 39-09-73206, 39-09-73725 through 73791, 39-09-  
15 79038 through 39-09-79041, 39-09-79589, 39-09-79638 and 39-09-79639.

16 **DATE OF FILING OF DOCUMENT:** July 11, 2006

17 **NUMBER OF PAGES OF DOCUMENT:** 7 (excluding attachments)

18 1. The applicants are the United States of America on behalf of the Nation and the  
19 Allottees, Tucson, and Farmers Investment Co. and Farmers Water Co. (collectively, "FICO").

20 2. In accordance with the Special Procedural Order, the applicants seek proceedings to  
21 obtain a final judgment ("Proposed Judgment") approving a Stipulation dated July 11, 2006  
22 ("Stipulation"), which Stipulation and Proposed Judgment set forth the principal terms of the  
23 Tohono O'odham Settlement Agreement ("Settlement Agreement"), which is that settlement  
24 agreement between the parties executed as of April 30, 2003 and (i) restated from the April 30,  
25 2003 Agreement, (ii) revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478  
26 and (iii) executed by each party on the date shown next to the party's signature. The applicants are  
27 parties to the Stipulation and to the Settlement Agreement. The Stipulation and Settlement  
28 Agreement were entered into in good faith. The Stipulation is filed on even date herewith. All

1 defined terms herein. which have not been separately defined, have the meaning specified in the  
2 Settlement Agreement. The Settlement Agreement and Proposed Judgment are attached as Exhibits  
3 A and B to the Stipulation.

4 3. Copies of the Stipulation with attached Settlement Agreement and Proposed  
5 Judgment will be mailed to and available for inspection in the offices of the Clerks of Superior  
6 Court in every Arizona county and of the Arizona Department of Water Resources promptly upon  
7 issuance of the Order for Special Proceedings.

8 4. The claimed water rights that are described in the Settlement Agreement, the  
9 Stipulation and Proposed Judgment, including the water rights which are the subject of statement  
10 of claimant numbers 39-74333, 39-74335 and 39-74336 by the United States, are within the  
11 jurisdiction of the Court under the principles of *Arizona v. San Carlos Apache Tribe of Arizona*,  
12 463 U.S. 545 (1983), and *United States v. Superior Court et al.*, 144 Ariz. 265, 697 P.2d 658  
13 (1985).

14 5. The claims of settling parties Tucson, FICO and Asarco in this adjudication  
15 proceeding (the "Gila River Adjudication") are adverse to claimant numbers 39-74333, 39-74335  
16 and 39-74336 filed by the United States.

17 6. The Agreement has been confirmed by the Southern Arizona Water Rights  
18 Settlement Amendments Act of 2004, Title III of Public Law 108-451 ("Settlement Act").

19 7. The Agreement has been found, in all respects, to be fair, reasonable, adequate and  
20 in the best interests of the Allottees by the U.S. District Court for the District of Arizona in *United*  
21 *States v. City of Tucson*, Case No. CV 75-39-TUC FRZ. The Judgment/Partial Judgment dated  
22 June 14, 2006 is attached hereto as Exhibit 1.

23 8. Special circumstances prevent the consideration of the Stipulation and the Proposed  
24 Judgment in the normal course of the Gila River Adjudication. Section 302 of the Settlement Act  
25 provides that the Settlement Act is void unless the Secretary of the Interior publishes a statement of  
26 findings in the Federal Register on or before December 31, 2007 that, among other requirements,  
27 the Proposed Judgment has been approved in this proceeding. Time does not permit this Court to  
28 consider these claims in the normal course of the Gila River Adjudication.

9. The Settlement Agreement settles the claims for the water rights within the Tucson Management Area of the Nation, the Allottees and the United States on behalf of the Nation and Allottees.

10. The water rights which are confirmed by the Settlement Agreement and described in the Stipulation and Proposed Judgment, are no more extensive than the United States on behalf of the Nation and Allottees would have been able to prove at trial.

11. A proposed form of order directing that special proceedings be conducted to approve the Stipulation and the Proposed Judgment adjudicating the water rights within the Tucson Management Area of the Nation, the Allottees, and the United States on behalf of the Nation and the Allottees, is attached hereto as Exhibit 2.

12. A proposed form of Notice of Settlement ("Notice") is attached hereto as Exhibit 3.

13. The parties request that the Court direct the Arizona Department of Water Resources to prepare a factual analysis or technical assessment of the Settlement.

WHEREFORE, the applicants pray that the Court enter an Order for Special Proceedings for the approval of the Stipulation and the Proposed Judgment, that is binding upon all parties to these proceedings.

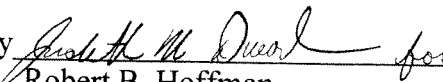
DATED this 11<sup>th</sup> day of July, 2006.

SACKS TIERNEY P.A.

By Marvin S. Cohen  
Marvin S. Cohen  
Judith M. Dworkin  
Attorneys for City of Tucson

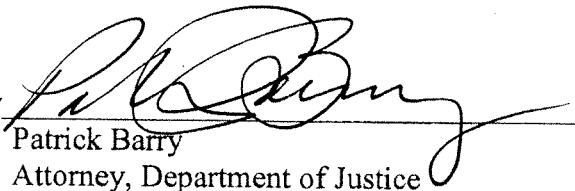
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SOMACH, SIMMONS & DUNN

By  for  
Robert B. Hoffman  
Attorneys for Farmers Investment Co.  
and Farmers Water Co.

1 UNITED STATES OF AMERICA

2  
3  
4 By



5 Patrick Barry  
6 Attorney, Department of Justice  
7 Environmental and Natural Resources Division  
8 Indian Resource Section  
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10 Washington, D.C. 20026-4378  
11 (202) 305-0254  
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1 COPY OF THE FOREGOING MAILED  
2 this \_\_\_\_ day of \_\_\_\_\_, 2006, to:

3 Gila River Adjudication W-1, W-2, W-3, W-4  
4 Court Approved Mailing List dated July 7, 2006.  
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# **EXHIBIT 1**



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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 United States of America, et al.,

10 Plaintiffs,

11 vs.

12 City of Tucson, et al.,

13 Defendants.

14 Felicia Alvarez, et al.,

15 Plaintiffs,

16 vs.

17 City of Tucson, et al.,

18 Defendants.  
19  
20

No. CV 75-039-TUC-FRZ

(consolidated with CV 75-051)

**FINAL JUDGMENT**

No. CV 93-039-TUC-FRZ

**PARTIAL JUDGMENT**

21 This matter having come before the court for hearing, pursuant to the Order of the  
22 Court, dated October 12, 2005, on the Joint Motion of plaintiffs and defendants for approval  
23 of the settlement set forth in the Tohono O'odham Settlement Agreement ("Settlement  
24 Agreement") dated April 30, 2003, amended to conform with Public Law 108-451, 118 Stat.  
25 3478, due and adequate notice having been given to the Plaintiff Allottee Classes as required  
26 in the Order, the Court having considered all papers filed, and argument and evidence  
27 provided at the proceeding and otherwise being fully informed in the matter, and good cause  
28 appearing therefore,

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. This Final Judgment in Case No. CV 75-039 TUC FRZ (Consolidated with CV  
3 No. 75-051) and Partial Judgment in Case No. CV 93-039 TUC FRZ (collectively, the  
4 "Judgment") incorporates by reference the definitions set forth in the Settlement Agreement,  
5 and all terms used herein shall have the same meanings as set forth in the Settlement  
6 Agreement.

7 2. This Court has jurisdiction over the subject matter of this litigation and over  
8 all parties to this litigation, including all members of the Plaintiff Allottee Classes.

9 3. This Court hereby approves the settlement set forth in the Settlement  
10 Agreement (the "Settlement") and finds that the Settlement is, in all respects, fair, reasonable,  
11 adequate and in the best interests of the Plaintiff Allottee Classes. Consummation of the  
12 Settlement in accordance with the terms and provisions of the Settlement Agreement is  
13 approved.

14 4. The Settlement is binding upon: all parties to this consolidated litigation  
15 including (a) the Tohono O'odham Nation, (b) all persons (i) that hold a beneficial real  
16 property interest in an Indian allotment that is located within the San Xavier Reservation and  
17 is held in trust by the United States or (ii) that hold fee simple title in real property on the San  
18 Xavier reservation that, at any time before the date on which the person acquired fee simple  
19 title, was held in trust by the United States as an Indian allotment and (iii) who have not  
20 timely elected to be excluded from the Classes as provided by the Court in its Order dated  
21 October 12, 2005, (c) the United States, (d) the city of Tucson, (e) Farmers Investment  
22 Company and the Farmers Water Company (together referred to as "FICO"), (f) Asarco  
23 Mining Company ("Asarco") and all other defendant parties.

24 5. By reason of the Settlement, members of the Allottee Classes (along with the  
25 San Xavier District) are entitled to:

26 a. a first right of beneficial use to 35,000 acre feet per year of Central Arizona  
27 Project ("CAP") water of the 50,000 acre feet per year of CAP water deliverable to  
28 the San Xavier District,

- b. 10,000 acre feet per year of groundwater pumping right,
- c. a right to "bank" in a deferred pumping storage account groundwater not pumped in any year and pump up to an additional 10,000 acre feet per year or a maximum of 50,000 acre feet in any 10-year period of deferred groundwater pumping credits,
- d. a right to pump groundwater from Exempt Wells,
- e. a right to the use of direct recharge credits to pump water from the ground that are not marketable under state law,
- f. protections for due process and other rights pursuant to an allottee water rights code,
- g. the right to have the San Xavier District elect to accept a cash-out of \$18,300,000 (plus interest from January 1, 2008 until the cash-out) in lieu of construction of a new farm within the San Xavier Reservation, funds to be controlled, managed and invested by the San Xavier District and used for governmental and social services for the San Xavier community and the allottees,
- h. state limitations on approval of new pumping from the area in close proximity to the San Xavier Reservation,
- i. the sum of up to \$891,200 for a water management plan for the San Xavier Reservation,
- j. the sum of \$300,000 from the city of Tucson in 5 annual installments of \$60,000 for the repair of Sinkholes that have occurred on the San Xavier Reservation,
- k. an agreement with FICO to limit pumping by FICO to no more than 850 acre feet per year from within 2 miles of the San Xavier Reservation and to further limit pumping to 36,000 acre feet per year not including water stored in the ground from all FICO's lands,
- l. an agreement with Asarco to use CAP water thereby limiting Asarco's groundwater pumping on and near the San Xavier Reservation, and
- m. a right to benefit from the sale of marketable groundwater credits obtained

1 through the use by Asarco of CAP rather than groundwater.

2 6. In exchange for the benefits provided in the Settlement and effective on the  
3 Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives and  
4 releases:

5 a. any and all past, present, and future claims for Water Rights (including  
6 claims based on aboriginal occupancy) arising from time immemorial and, thereafter,  
7 forever, claims for Injury to Water Rights from time immemorial through the  
8 Enforceability Date, and claims for future Injury to Water Rights for land within the  
9 San Xavier Reservation, against the State (or any agency or political subdivision of  
10 the State), any municipal corporation; and any other person or entity (other than the  
11 Nation);

12 b. any and all claims for Water Rights arising from time immemorial and,  
13 thereafter, forever, claims for Injury to Water Rights arising from time immemorial  
14 through the Enforceability Date, claims for failure to protect, acquire, or develop  
15 Water Rights for land within the San Xavier Reservation from time immemorial  
16 through the Enforceability Date, against the United States, in any capacity, (including  
17 any agency, officer, and employee of the United States);

18 c. any and all claims for Injury to Water Rights arising after the  
19 Enforceability Date for land within the San Xavier Reservation resulting from the off-  
20 Reservation diversion or use of water in a manner not in violation of the Settlement  
21 or State law against the United States, in any capacity, the State (or any agency or  
22 political subdivision of the State), any municipal corporation, and any other person  
23 or entity;

24 d. any and all past, present, and future claims arising out of or relating to the  
25 negotiation or execution of this Agreement or the negotiation or enactment of the  
26 SAWRSA Amendments, against the United States, the State (or any agency or  
27 political subdivision of the State), any municipal corporation; and any other person  
28 or entity; and

1 e. any and all past, present, and future claims for Water Rights arising from  
2 time immemorial and, thereafter, forever, and claims for Injury to Water Rights  
3 arising from time immemorial through the Enforceability Date, against the Nation  
4 (except that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308  
5 of the SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall  
6 retain rights to share in the water resources granted or confirmed under the SAWRSA  
7 Amendments and this Agreement with respect to uses within the San Xavier  
8 Reservation).

9 7. In exchange for the benefits provided in the Tucson Agreement and effective  
10 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally  
11 waives and releases:

12 a. any and all claims against the city of Tucson (including any agency, officer  
13 and employee of the City) for injuries to land within the Tucson Management Area  
14 resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other  
15 laws which may otherwise have been enforceable by money damages, declaratory  
16 relief, injunction, or other remedy arising from time immemorial to the Enforceability  
17 Date and thereafter forever; and

18 b. any and all past, present and future claims against the United States  
19 (including any agency, officer and employee of the United States) for injuries to land  
20 within the Tucson Management Area resulting from Sinkholes, Land Subsidence or  
21 erosion caused by or resulting from the actions or inactions of the City of Tucson  
22 under Federal, State and other laws which may otherwise have been enforceable by  
23 money damages, declaratory relief, injunction, or other remedy.

24 8. In exchange for the benefits provided in the Asarco Agreement and effective  
25 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally  
26 waives and releases:

27 a. all claims against Asarco arising out of Asarco's withdrawal of water from  
28 beneath the ground within the Tucson Management Area from time immemorial

1 through the Enforceability Date; and

2 b. all claims against Asarco that may arise after the Enforceability Date to the  
3 extent that such claims arise out of Asarco's withdrawal of water within the Tucson  
4 Management Area pursuant to its existing Type 1 and Type 2 state law water rights  
5 and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-  
6 802.01, except as such rights are agreed to be limited in the Settlement.

7 9. In exchange for the benefits provided in the FICO Agreement and effective on  
8 the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives  
9 and releases:

10 a. all claims against FICO arising out of FICO's withdrawal of water from  
11 beneath the ground within the Tucson Management Area from time immemorial  
12 through the Enforceability Date; and

13 b. all claims against FICO that may arise after the Enforceability Date to the  
14 extent that such claims arise out of FICO's withdrawal of water within the Tucson  
15 Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law  
16 water rights and withdrawals of stored water as defined on the Enforceability Date in  
17 A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

18 10. With respect to the releases contained in the Settlement, the Court finds that  
19 the Plaintiff Allottee Classes expressly understand and agree that the Settlement fully and  
20 finally releases and forever resolves the matters released and discharged in paragraphs 6  
21 through 9 above and in the Settlement Agreement, including those which may be unknown,  
22 unanticipated or unsuspected. Each Plaintiff Allottee Class acknowledges that it is aware  
23 that the class members may hereafter discover facts relevant to the subject matter of this  
24 Settlement, but that it is the intention of each member of the Plaintiff Allottee Class hereby  
25 to fully, finally and forever settle and release all of the claims, disputes and differences  
26 known or unknown, suspected or unsuspected, except as otherwise expressly provided  
27 herein.

28 11. The Defendant parties to the Settlement agree that the Settlement represents

1 a compromise of disputed claims without admission of any fact or allegation.

2 12. Following entry of this Judgment, the representatives of the Plaintiff Allottee  
3 Classes shall execute the Settlement Agreement on behalf of the members of the respective  
4 classes.

5 13. This Judgment shall be an exhibit to the Stipulation and Request for Entry of  
6 Judgment and Decree in the Arizona state court adjudication proceeding entitled In re the  
7 General Adjudication of All Rights to Use Water in the Gila River System and Source, No.  
8 W-1, W-2, W-3 and W-4 (the "Gila River Adjudication Court").

9 14. With the exception of the use of this Judgment in the Gila River Adjudication  
10 Court, neither this Judgment nor any other order entered in this consolidated litigation shall  
11 constitute an admission of liability or of any other fact by any party, and no such document  
12 or order shall have any res judicata, collateral estoppel or issue preclusive effect in any other  
13 or subsequent proceeding.

14 15. The Settlement Agreement and all exhibits and attachments thereto including  
15 the separate agreements referred to as the Tucson Agreement, the FICO Agreement and the  
16 Asarco Agreement are incorporated herein by this reference and are made a part of this  
17 Judgment. This Judgment does not diminish the rights and obligations of the parties under  
18 the Settlement Agreement.

19 16. The above-captioned case of *United States v. Tucson*, CV 75-039 TUC FRZ  
20 (consolidated with CV 75-051) and Causes of Action 1 through 3 of *Alvarez v. Tucson*, CV  
21 93-039 TUC FRZ, are dismissed with prejudice effective upon the publication by the  
22 Secretary of the Interior of a notice in the Federal Register of completion of all actions  
23 necessary to make the settlement effective as required by Section 302(b) of the Arizona  
24 Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478. Without limiting the  
25 generality and legal effect of the foregoing, the dismissal with prejudice extends to all claims  
26 ever asserted in this Consolidated Litigation individually or on behalf of the Plaintiff Allottee  
27 Classes except those claims raised in Causes of Action 4 and 5 of *Alvarez v. Tucson*, CV 93-  
28 039 TUC FRZ.

17. All members of the Plaintiff Allottee Classes as of January 14, 2006 shall conclusively be deemed to be and remain members of the Plaintiff Allottee Classes, to have given the releases described in Paragraphs 6 through 9 above, and to be bound by the Settlement and this Judgment.

18. All members of the Plaintiff Allottee Classes are barred and permanently enjoined from instituting, asserting or prosecuting, directly, representatively, derivatively or in any other capacity, any claims against any of the Released Parties.

19. The Notice given to the Plaintiff Allottee Classes of the Settlement as described in the Joint Motion and the Order constituted the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and of the matters set forth in the Notice, including the Settlement set forth in the Joint Motion, to all persons entitled to such Notice, and the Notice fully satisfied the requirements of due process and applicable law.

20. The Court having considered any objections filed by members of the Plaintiff Allottee Classes to entry of this Judgment, and having found those objections, if any, to be without merit in the circumstances, all such objections are overruled and denied.

21. Upon publication of the notice in the Federal Register identified in paragraph 16, the parties are directed to file a copy of the Federal Register notice with the Court.

22. Causes of Action 4 and 5 of *Alvarez v. Tucson* are not dismissed.

23. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court further expressly finds and determines that there is no just reason for delay and therefore expressly directs that this Judgment be entered as a final judgment.

DATED this 14th day of June, 2006.

*Frank R. Zapata*  
FRANK R. ZAPATA  
United States District Judge



# **EXHIBIT 2**

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SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

IN RE THE GENERAL  
ADJUDICATION OF ALL RIGHTS TO  
USE WATER IN THE GILA RIVER  
SYSTEM AND SOURCE.

No. W-1 (Salt)  
No. W-2 (Verde)  
No. W-3 (Upper Gila)  
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-208

ORDER FOR SPECIAL PROCEEDINGS  
FOR CONSIDERATION OF THE TOHONO  
O'ODHAM NATION WATER RIGHTS  
SETTLEMENT

**Contested Case Name:** *In re Proposed Tohono O'odham Nation Water Rights  
Settlement.*

**HSR Involved:** None.

**Descriptive Summary:** Order of Judge Eddward P. Ballinger, Jr., approving  
application by Applicants filed July 11, 2006, to commence special proceedings to consider  
the Settlement of the claim for water rights within the Tucson Management Area of the  
Tohono O'odham Nation and individual Indian trust allotment landowners ("Allottees")  
and of the United States acting on behalf of the Nation and the Allottees. The Tucson  
Management Area is (A) that area designated as the Tucson Active Management Area  
under the Arizona Groundwater Management Act of 1980 and subsequently divided into  
the Tucson Active Management Area and the Santa Cruz Active Management Area and (B)  
the portion of the Upper Santa Cruz Basin that is not located within the area described in  
(A) above.

1        **Date of Filing:**     July 11, 2006.

2        **Number of Pages:** 8 without attachments.

3        This matter came before the Court on July 11, 2006, upon the application of the  
4 United States of America, the City of Tucson and Farmers Investment Co. ("Applicants")  
5 (Applicants and the State of Arizona, ASARCO, the Nation and the Allottees are  
6 hereinafter referred to as the "Settling Parties") for an order for special proceedings,  
7 pursuant to the Special Procedural Order Providing for the Approval of Federal Water  
8 Rights Settlements, Including Those of Indian Tribes issued by the Arizona Supreme Court  
9 on May 16, 1991. The application shall be referred to hereinafter as the "Application for  
10 Special Proceedings." The Supreme Court's May 16, 1991 Order shall be referred to  
11 hereinafter as the "Special Procedural Order."

12        Entry of an order for special proceedings is requested for the Court to consider a  
13 stipulation filed on July 11, 2006 (the "Stipulation"), which sets forth the terms of the  
14 Settlement Agreement, and incorporates and attaches as exhibits thereto copies of: (1) an  
15 agreement settling all claims for water rights of the Nation, the Allottees and United States  
16 on behalf of the Nation and the Allottees within the area defined as the Tucson  
17 Management Area (the "Settlement Agreement") and (2) a proposed judgment and decree  
18 ("Proposed Judgment") adjudicating the water rights of the Nation, the Allottees and the  
19 United States on behalf of the Nation and the Allottees within the Tucson Management  
20 Area, as established in the Settlement Agreement. The Court, having considered the  
21 Application for Special Proceedings ex parte, as is authorized by paragraph B(1) of the  
22 Special Procedural Order, finds the following:

23        1.     The Settling Parties have reached a proposed settlement ("Settlement") of all  
24 claims of the Nation, the Allottees and the United States on behalf of the Nation and the  
25 Allottees for water rights within the Tucson Management Area, whose claimed water rights  
26 are subject to determination in this proceeding (the "Gila River Adjudication"). Congress  
27 ratified the Settlement in passing the Southern Arizona Water Rights Settlement  
28 Amendments Act of 2004, Title III of Public Law.108-451 ("Settlement Act"). The U.S.

1 District Court for the District of Arizona found the Settlement, in all respects, to be fair,  
2 reasonable adequate and in the best interests of the Allottees. *United States v. City of*  
3 *Tucson*, Case No. CV-75-39 TUC FRZ, Final Judgment/Partial Judgment, June 14, 2006 is  
4 attached as Exhibit 1 to the Application.

5         2. The Application for Special Proceedings satisfies the requirements of  
6 paragraph B(1) of the Special Procedural Order issued by the Arizona Supreme Court as it  
7 contains: (1) the Stipulation of the Applicants, which sets forth the terms of the Settlement  
8 Agreement and incorporates and attaches as exhibits thereto copies of the Settlement  
9 Agreement and the Proposed Judgment; (2) a request that the Court enter an order  
10 approving the Stipulation and the Proposed Judgment; (3) a description of the special  
11 circumstances that prevent the consideration of the Settlement in the normal course of the  
12 Gila River Adjudication; (4) a proposed order to commence the special proceedings, (5) a  
13 proposed notice of Settlement; and (6) information indicating the location of copies of the  
14 Settlement Agreement and supporting documents available for review.

15         3. The Settling Parties have satisfied paragraph A of the Supreme Court's  
16 Special Procedural Order which specifies the conditions warranting special procedures to  
17 consider the proposed settlement:

18             a. The Settlement involves the claimed water rights within the Tucson  
19 Management Area of the United States acting on behalf of the Nation and the Allottees,  
20 which are the subject of statement of claimant numbers 39-74333, 39-74335 and 39-74336.  
21 The claims of the United States acting on behalf of the Nation and the Allottees are within  
22 the jurisdiction of the Court under the principles of *Arizona v. San Carlos Apache Tribe of*  
23 *Arizona*, 463 U.S. 545 (1983) and *United States v. Superior Court et al.*, 144 Ariz. 265, 697  
24 P.2d 658 (1985).

25             b. The claimed water rights of Settling Parties Tucson, FICO and Asarco are  
26 adverse to those of the Nation.

27             c. The Settlement Agreement establishes the water rights of the Nation, the  
28 Allottees and the United States acting on behalf of the Nation and the Allottees. A

1 description of the water rights of the Nation, the Allottees and the United States acting on  
2 behalf of the Nation and the Allottees as established in Paragraph 4 of the Settlement  
3 Agreement, is set forth in Attachment A to this Order, which description is incorporated  
4 herein.

5 d. The Settlement has been confirmed by Congress in the Settlement Act,  
6 but the confirmation by Congress is conditioned upon approval of the Settlement by this  
7 Court.

8 e. There are special circumstances preventing the consideration of the  
9 Settlement Agreement in the normal course of the Gila River Adjudication. Those special  
10 circumstances are that the enforceability of the Settlement Act is conditioned upon the  
11 entry of an order by this Court approving the Proposed Judgment, sufficiently prior to  
12 December 31, 2007 to permit the Secretary of the Interior to publish findings in the Federal  
13 Register that this requirement, among others, has been met. In the normal course of the  
14 Gila River Adjudication, the claims for water rights of the Nation and the Allottees would  
15 not be considered by the Court prior to December 31, 2007.

16 4. The claimed water rights of Tucson, FICO and Asarco will not be adjudicated  
17 in this special proceeding, but will instead be adjudicated in the normal course of the Gila  
18 River Adjudication.

19 5. The proposed settlement of all of the claims for water rights of the Tohono  
20 O'odham Nation, the Allottees, and of the United States on behalf of the Tohono O'odham  
21 Nation and Allottees is a lengthy agreement involving several parties. The Hydrographic  
22 Survey Report (HSR) concerning present and potential water uses of the Tohono O'odham  
23 Nation and Allottees, which would be prepared by the Arizona Department of Water  
24 Resources ("ADWR") in the normal course of the Gila River Adjudication to assist the  
25 Court and parties, has not been completed and is not even scheduled to be completed. As a  
26 consequence, it is appropriate for the Court to order ADWR to prepare a factual analysis  
27 and technical assessment of the proposed settlement as is authorized by paragraph B(3)(f)  
28 of the Supreme Court's Special Procedural Order.

1 NOW, THEREFORE, IT IS ORDERED:

2 1. The Application for Special Proceedings to consider the Settlement of the claims  
3 for water rights within the Tucson Management Area of the Nation, the Allottees and the  
4 United States acting on behalf of the Nation and the Allottees is granted. The conditions  
5 warranting special procedures have been satisfied. The Settling Parties shall serve by mail  
6 copies of their Application for Special Proceedings and this Order upon all persons listed in  
7 the Court-approved mailing list for the Gila River Adjudication.

8 2. The special proceedings shall be conducted in accordance with the Special  
9 Procedural Order Providing for the Approval of Federal Water Rights Settlements,  
10 Including Those of Indian Tribes, issued by the Arizona Supreme Court on May 16, 1991.

11 3. The Court will consider the Settlement under the criteria enumerated by the  
12 Arizona Supreme Court in paragraph D (6) of its Special Procedural Order. Except as  
13 otherwise provided in the Stipulation and Settlement Agreement, if this Court approves the  
14 Stipulation regarding the Settlement and enters the Proposed Judgment adjudicating the  
15 water rights of the Nation, the Allottees and the United States acting on behalf of the  
16 Nation and the Allottees, the Proposed Judgment will be binding upon all parties to the Gila  
17 River Adjudication.

18 4. ADWR, shall file with the Court no later than October 24, 2006, a factual  
19 analysis and technical assessment of the proposed settlement. ADWR's report shall  
20 including the following: (1) a review of the terms of the settlement; (2) a summary of the  
21 statements of claimant filed by or on behalf of the Tohono O'odham Nation and the  
22 Allottees within the Tucson Management Area; (3) a brief description of the history,  
23 physical characteristics, and natural resources (including an estimate of the arable acreage)  
24 of that portion of the Tohono O'odham Nation within the Tucson Management Area,  
25 emphasizing those facts, events, and plans which may be important in ascertaining the  
26 water rights of the reservation within the Tucson Management Area; (4) a determination of  
27 whether there is a reasonable basis for this Court to conclude that the water rights of the  
28 Tohono O'odham Nation, the Allottees and the United States on behalf of the Tohono

1 O'odham Nation and the Allottees as established in the Settlement Agreement and the  
2 Proposed Final Judgment and Decree, are no more extensive than the Tohono O'odham  
3 Nation, the Allottees, and the United States on behalf of the Tohono O'odham Nation and  
4 the Allottees, would be able to prove to a degree of reasonable probability at the trial of  
5 these claimed rights in the due course of the Gila River Adjudication; (5) the probable  
6 depletion of water resources in the Gila River system and source as a result of the proposed  
7 settlement; (6) the probable impact of the proposed settlement upon categories of other  
8 claimants in the adjudication; (7) the probable impact of the proposed settlement upon the  
9 groundwater uses on or in the vicinity of the reservation and upon the groundwater  
10 regulatory program administered by ADWR; and (8) other important impacts or  
11 consequences that might result from the proposed settlement. The Settling Parties are  
12 ordered to meet with ADWR and to provide ADWR with information and documents  
13 necessary for ADWR to complete its factual analysis and technical assessment (including  
14 information comparing the proposed settlement to the amount of water the Tohono  
15 O'odham Nation the Allottees, and the United States on behalf of the Tohono O'odham  
16 Nation and the Allottees could reasonably prove at a trial of its claimed water rights).  
17 Upon filing the report with the Court, ADWR is ordered to serve a copy of the report upon  
18 each of the Settling Parties and each person appearing on the Court-approved mailing list  
19 for the Gila River Adjudication.

20 5. The Settling Parties shall provide interested parties in the Gila River  
21 Adjudication and the public with information about the Settlement at a public meeting. The  
22 meeting will include a statement that the meeting has been ordered by the Court, a  
23 disclaimer indicating that the interests of the parties to the Settlement ("Settling Parties")  
24 may be adverse to the interests of other parties in the Gila River Adjudication, a description  
25 of the terms and conditions of the Settlement, and an announcement of the date objections  
26 to the Settlement must be filed. At the meeting, the Settling Parties shall make copies of  
27 this Order (including attachments) available to those persons who are present. The meeting  
28

1 will be held at the City of Tucson Mayor and Council Chambers, 255 West Alameda Street,  
2 Tucson, Arizona 85701, at 7:00 p.m. on November 13, 2006.

3         6. The Settling Parties shall serve by first-class mail a notice upon all claimants  
4 (and all assignees and transferees of claimants, to the extent they appear in ADWR's  
5 records) in the Gila River Adjudication, notifying them of the application to approve the  
6 Settlement involving the water rights within the Tucson Management Area of the Nation,  
7 the Allottees and the United States acting on behalf of the Nation and the Allottees; the  
8 pendency of this special proceeding; the time, date, and location of the informational  
9 meeting described in the preceding paragraph; and advising them where complete copies of  
10 the application for special proceedings and this Order may be found. The Court approves  
11 the use of the Notice of Settlement attached hereto as Attachment B. The Settling Parties  
12 shall publish a copy of the Notice of Settlement in two newspapers of general circulation  
13 within the geographical area encompassed by the Gila River Adjudication.

14         7. Objections to the application to approve the Settlement shall be filed with the  
15 Clerk of the Court in and for Maricopa County no later than December 13, 2006.

16         8. Any Settling Party may file a response to an objection no later than twenty (20)  
17 days after the time for filing objections has expired.

18         9. The Settling Parties shall promptly provide ADWR with a complete copy of the  
19 Settlement Agreement including copies of all attachments and documents referred to or  
20 incorporated therein, a copy of the Settlement Act, and a copy of any printed congressional  
21 reports concerning the Settlement Act. ADWR shall make its set of these documents  
22 available for public inspection and copying at its headquarters and at the Tucson AMA  
23 office during its normal business hours. The Settling Parties shall also provide a complete  
24 copy of the Settlement Agreement, including copies of all attachments, and a copy of the  
25 Settlement Act, to the offices of the Clerks of the Superior Court in every Arizona county.

26         \* \* \*

27         \* \* \*

28         \* \* \*



10. The pretrial orders of this Court apply to these special proceedings to the extent that they are consistent with the Supreme Court's Special Procedural Order attached hereto as Attachment C.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Judge of the Superior Court

# **EXHIBIT 3**

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**SUPERIOR COURT OF ARIZONA**

**MARICOPA COUNTY**

**IN RE THE GENERAL  
ADJUDICATION OF ALL RIGHTS TO  
USE WATER IN THE GILA RIVER  
SYSTEM AND SOURCE.**

**No. W-1 (Salt)  
No. W-2 (Verde)  
No. W-3 (Upper Gila)  
No. W-4 (San Pedro)**

**CONTESTED CASE NO. W1-208**

**NOTICE OF PROPOSED SETTLEMENT**

In re Proposed Tohono O'odham Nation Water Rights Settlement.

**IMPORTANT NOTICE FOR CLAIMANTS IN THE GILA RIVER ADJUDICATION**

Several parties to the Gila River general stream adjudication ("Gila River Adjudication") have asked the Superior Court to approve a proposed settlement of all claims within the Tucson Active Management Area, the Santa Cruz Active Management Area and that part of the Upper Santa Cruz Basin not within either of the Active Management Areas ("Tucson Management Area") for water rights of the Tohono O'odham Nation (the "Nation"), individual Indian trust allotment landowners ("Allottees"), and the United States acting on behalf of the Nation and the Allottees. The claimed water rights of the Nation, the Allottees, and the United States on behalf of the Nation and the Allottees, for the San Xavier Reservation and the eastern portion of the Schuk Toak District (as shown on the map, Attachment A), are subject to adjudication by this Court.

The parties to this proposed settlement (the "Settling Parties") include: the Tohono O'odham Nation, the Allottees, the United States of America, the State of Arizona, the City of Tucson, Farmers Investment Co. and Asarco Incorporated.

**YOU ARE HEREBY NOTIFIED** that the Court is conducting special proceedings to determine whether this proposed settlement should be approved. If the Court approves the proposed settlement and enters a final judgment adjudicating the water rights claims within the Tucson Management Area of the Nation, the Allottees, and the United States on behalf of the Nation and Allottees, as set forth in a stipulation reflecting the principal terms of the settlement, the judgment will be binding upon all claimants in the Gila River Adjudication.

The Court has ordered the Arizona Department of Water Resources ("ADWR") to prepare a factual analysis or technical assessment of the proposed settlement. ADWR's report must be completed by October 24, 2006.

The Court has ordered the Settling Parties to provide interested parties in the Gila River Adjudication and the public with information about the proposed settlement. A meeting will be held at 7:00 p.m. on November 13, 2006, at the City of Tucson Mayor and Council Chambers, 255 West Alameda Street, Tucson, Arizona 85701.

Claimants in the Gila River Adjudication will have until December 13, 2006 to file any objections they might have to the proposed settlement. The Court will thereafter schedule hearings on the proposed settlement and any objections to the proposed settlement.

1 You or your predecessor has filed a statement of claimant for water uses in the Gila River system and source.  
2 Your claimed water rights may be affected by the proposed settlement. To help you determine whether you should file  
3 an objection to the proposed settlement, you should review the application filed by the parties to the proposed  
4 settlement; the Court's Order of July 11, 2006, authorizing these special proceedings; and the settlement documents.  
5 All these materials may be examined during business hours at the Arizona Department of Water Resources, 3550 N.  
6 Central Avenue, Phoenix, Arizona 85012, the Tucson Active Management Area, 400 W. Congress, Suite 518, Tucson,  
7 Arizona 85701, or at Arizona Department of Water Resource's website (www.azwater.gov). Also, copies of the  
8 proposed settlement may be examined at the office of the Superior Court Clerk in each Arizona county.

9 If you decide to file an objection to the proposed settlement, you must do so on or before December 13, 2006.  
10 Any claimant in the Gila River Adjudication may file an objection with the Adjudication Court asserting that:

11 a. The approval of the stipulation setting forth the terms of the settlement, and the proposed final  
12 judgment and decree adjudicating the water rights claims of the Nation, the Allottees, and the United States on behalf  
13 of the Nation and the Allottees, as set forth in the settlement agreement, would cause material injury to the objector's  
14 claimed water right;

15 b. The conditions described in the Arizona Supreme Court's Special Procedural Order Providing for the  
16 Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991, which warrant  
17 this special proceeding have not been satisfied; or

18 c. The water rights established in the settlement agreement, set forth in the stipulation and adjudicated  
19 in the proposed final judgment and decree, are more extensive than the Indian tribe or federal agency would have been  
20 able to establish at trial.

21 Objections must also include:

- 22 a. The name, address, and signature of the objector;
- 23 b. A description of the water rights asserted in the objector's claim;
- 24 c. A statement of the legal basis for the objection, and the specific factual grounds upon which the  
25 objection is based;
- 26 d. A list of any witnesses and exhibits that the objector intends to present at any hearing on the  
27 objection;
- 28 e. Any request for discovery relating to the objection and a statement as to the need for such discovery;  
and
- f. Any other information the Adjudication Court may require in the order for summary proceedings.

Objections must be filed with the Clerk of the Superior Court, Maricopa County, Attention: Water Case No.  
W1-208, 601 W. Jackson, Phoenix, Arizona 85003.

If you have any questions concerning the proposed settlement and these special proceedings to consider the  
proposed settlement, you may wish to contact an attorney of your choice.

This Notice was approved on \_\_\_\_\_, and mailed pursuant to the order of the Court.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Judge of the Superior Court